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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,406	02/06/2002	Scott A. Merkle	P05525US0	9604

27139 7590 04/01/2004

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EXAMINER

STINSON, FRANKIE L

ART UNIT PAPER NUMBER

1746

DATE MAILED: 04/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/068,406

Applicant(s)

MERKLE ET AL.

Examiner

FRANKIE L. STINSON

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 and 25-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 25-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.
2. The indicated allowability of claims 9, 12-17, 20, 23, 24, 29 and 30 is withdrawn in view of the newly discovered reference(s) to Eichman et al. U. S. Pat. No. 4,700,554, Copeland U. S. Pat. No. 4,687,121, Denisar U. S. Pat. No. 5,870,906 and Caron U. S. Pat. No. 4,759,202. Rejections based on the newly cited reference(s) follow.
3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 5-11 and 17, 19-20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Eichman et al.

Re claim 1 for example, note that Eichman discloses a detergent dispenser for a clothes washing machine having a tub (22) for holding clothes to be washed, comprising: a base (59) mounted in the washing machine; a first detergent cup (44) in the base hold and dispense a powder detergent; a second detergent cup (138, see fig. 12) removably mounted the hold and dispense a liquid detergent. Also note that Eichman discloses a siphoning system (as at col. 6, line 50).

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eichman et al.

Claim 18 defines over Eichman only in the recitation of the first cup being removable from the base. Nonetheless, to have parts removable is not deemed to structurally define over Eichman in that, if it were considered desirable for any reason to have a part to be removable for that reason, then it would be obvious (see MPEP2144.04 V. C. MAKING PORTABLE, INTEGRAL, SEPARABLE, ADJUSTABLE, OR CONTINUOUS Making Separable:

In re Dulberg, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961) (The claimed structure, a lipstick holder with a removable cap, was fully met by the prior art except that in the prior art the cap is "press fitted" and therefore not manually removable. The court held that "if it were considered desirable for any reason to obtain access to the end of [the prior art's] holder to which the cap is applied, it would be obvious to make the cap removable for that purpose.").

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eichman et al. in view of Copeland.

Claim 6 defines over Eichman only in the recitation of the removable grate. The patent to Copeland is cited disclosing in a detergent dispenser having a drain as at (27), a grate (41) position in the drain of the dispenser. It therefore would have been obvious to one having ordinary skill in the art to modify the drain in Eichman, to include a grate as taught by Copeland, for the purpose of preventing and large chunks/clumps of

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powdered detergent from entering the washtub. To have the same removable, see *In re Dulberg* as applied to the subject matter of claim 18 above.

8. Claims 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eichman in view of either Kretchman et al., Caron or Denisar.

Claim 12 defines over Eichman only in the recitation of the third cup for fabric softener. Eichman discloses a third cup (as at 42) however; the same is not associated with the first cup. The patents to Kretchman, Caron and Denisar are cited disclosing a first cup for dispensing a detergent, a second cup for dispensing a bleach and a third cup for dispensing a fabric softener. It therefore would have been obvious to one having ordinary skill in the art to modify the device of Eichman to have the detergent dispenser (44) to also include a third cup as taught by either Kretchman, Caron or Denisar, for the purpose of reducing the cost in construction of individual dispensers. Re claim 12, Kretchman, Caron and Denisar all disclose the integral construction. Re claims 14-16, to have the third cup constructed similar to that of the second cup, is deemed to be an obvious extension of the teachings of Eichman (see MPEP 2144.04 as cited above under B "MAKING INTEGRAL").

9. Claims 21-23 and 25-30 rejected under 35 U.S.C. 103(a) as being unpatentable over Eichman et al. in view of either Kretchman et al., Caron, Denisar.

Re claims 21-23 and 25-30 Eichman, Kretchman, Caron and Denisar are cited as applied to the subject matter of claim 21 and 12 above.

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10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. European'651, Brenner, Sandrin, Sargeant, Smith et al., Culliton, Sharp et al., and Douglas, note the dual compartmented dispensers.

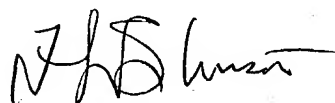
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRANKIE L. STINSON whose telephone number is (571) 272-1308. The examiner can normally be reached M-F from 5:30 a.m. to 2:00 p.m. and some Saturdays from 5:30 a.m. to 11:30 a.m.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to TECHNOLOGY CENTER 1700 (571) 272-1700.

Any inquiry for missing parts of this Office Action (copies of references, pages, forms etc.), contact the TEAM LEADER Ms. Nicol Scott (571) 272-1045.

fls



FRANKIE L. STINSON  
Primary Examiner  
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